

Application No. 10/797 265
Amendment dated March 8, 2006
Reply to Office action of December 9, 2005

REMARKS

Claims 1, 3 and 9 have amended, leaving claims 1-12 in the case and at issue.

The present invention relates to a new and improved restraining cable and rack system which restrains vertical stands of board and stick materials in divided display racks.

Claims 1 and 3 have been amended to overcome the objections raised by the Examiner.

Claim 9 has been amended to overcome the 112 rejection.

The Examiner rejected claims 1-2, 4-6 and 9-11 as being anticipated by Cole '225. As is well known anticipation requires that each and every element of the claimed invention be disclosed in one prior art reference. Applicant submits that the Examiner errs in finding each and every element in Cole.

The Examiner notes that Cole has a restraining cable 48 spanning multiple bays. A close look at Cole reveals that the cables 48 do not restrain anything. Safety netting is suspended from the cables 48 to form a safety barrier for pallets. These cables are permanently attached to one anchor point. Once installed, they are not designed for a variety of height adjustments. Cables 48 do not restrain merchandise, they are just attachment points for a net. Applicant's amended claim 1 requires a restraining cable with a variety of height adjustments to control spillage of a vertical stand of materials. Since Cole does not have a restraining cable as claimed, Cole cannot anticipate claim 1.

Likewise, Cole does not have means for attaching the restraining cable to the vertical bar at one of a variety of restraining cable height adjustments as called for in dependent claim 2, so Cole cannot anticipate claim 2.

Cole also does not have a sequence of slots and holes in the series of anchor points that allow for a restraining cable to be attached to the vertical bar (dependent claim 4), or allow for an attachment device and the restraining cable to be passed through intermediate bays in the rack (dependent claim 5).

Dependent claim 6 requires that the material-bay divider forms an “M” shape. While the Examiner states that Cole has an M-shape formed by bracing members between posts 20 and 22, it is very hard to see this shape in the reference. In any event the bracing members referred to by the Examiner are just that, namely, structural support members that cross at an angle purely for structural purposes to brace the pallet rack. These bracing members simply do not function as a material-bay divider by any stretch of the imagination.

Amended dependent claim 9 requires the restraining cable to span more than one bay, while independent claims 10 and 11 call for at least two material-bay dividers. Since Cole does not have these structures it can not anticipate these claims.

Applicant submits that in view of the above there is no basis for rejecting claims 1-2, 4-6, and 9-11 under section 102(b) and requests reconsideration and allowance. Applicant has persuasively argued that these claims are not anticipated by Cole.

The Examiner rejected the remaining claims, 3, 7-8 and 12, as being unpatentable over Cole alone. However, before prior art references can be combined or modified, there must be some suggestion or motivation found in the art to make the combination or modification. “It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the element.” Arkie Lures, Inc. v Gene Larew Tackle, Inc., 119 F.3d 953, 957 (Fed Cir. 1997).

The fact that references can be modified or combined is insufficient to meet this criterion. Moreover, the fact that the modification or combination would be well within the ordinary skill in the art, by itself, is insufficient to meet this criterion. You as the Examiner need to show the additional step of how this knowledge of the skilled artisan leads to the suggestion or motivation. Mere conclusionary statements do not adequately address the issue of motivation to combine.

Regarding claim 3, the Examiner stated that "Cole did not have a motivation to provide a quick release means for his restraining cable." Since the Examiner has admitted that there is no motivation in Cole to make the suggested modification, Applicant submits that section 103(a) is not a proper basis for rejection.

With respect to claim 8, the Examiner did not provide any suggestion or motivation for his comment. With respect to claims 7 and 12, the motivation set forth by the Examiner appears to Applicant to be mere conclusionary statements which do not adequately address the issue of motivation to modify.

It is respectfully submitted that Applicant has successfully addressed each of the concerns raised by the Examiner. Early allowance of claims 1-12 and passage of the application to issuance are earnestly solicited. Should the Examiner be of the opinion that a telephone conference would expedite matters, he is cordially invited to contact the undersigned at the telephone number listed below.

Dated: March 8, 2006

Respectfully submitted,

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